



**BILLING CODE 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[Docket No. FWS-R6-ES-2017-0044; FF06E11000-167-FXES11120600000]**

**Montana Department of Natural Resources Final Amended Habitat Conservation Plan and Final Supplemental Environmental Impact Statement**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final supplemental environmental impact statement (SEIS) and final Montana Department of Natural Resources Amended Habitat Conservation Plan (HCP) for forest management in Montana. The Montana Department of Natural Resources and Conservation (DNRC) applied to the Service for an amended incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). DNRC is requesting authorization of additional incidental take of three federally listed and one unlisted species on 81,416 acres to be added to its HCP-covered lands. DNRC also amended the HCP to incorporate the terms of a settlement agreement from a 2013 lawsuit on the original permit. The final SEIS considers the environmental effects of amending the HCP and permit and addresses public comments received on the 2017 draft EIS.

**DATES:** The documents will be available for inspection through June 25, 2018. We will not decide whether to issue an amended permit before the 30-day review period ends. We will document our decision in a record of decision (ROD).

**ADDRESSES:** *Reviewing Documents:* You may review the final SEIS and final amended HCP in any of the following ways:

- *Internet:* Go to [www.regulations.gov](http://www.regulations.gov) and search for Docket No. FWS–R6–ES–2017–0044.
- *In-person Review or Pick-up:* Documents will also be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, MT 59901 (telephone, 406–758–6882); U.S. Fish and Wildlife Service, 585 Shepard Way, Suite 1, Helena, MT 59601 (telephone, 406–449–5225); and Montana DNRC Forest Management Bureau, 2705 Spurgin Rd, Missoula, MT 59804 (telephone, 406–542–4328).
- Information regarding the final documents is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Conard, Assistant Field Supervisor, Kalispell Field Office, via email at [Ben\\_Conard@fws.gov](mailto:Ben_Conard@fws.gov) or via telephone at 406–758–6882; or Gary Frank, Deputy Chief, Forest Management Bureau, Montana DNRC, via email at [gfrank@mt.gov](mailto:gfrank@mt.gov), or via telephone at 406–542 –4328. Information on this proposed action is also available at the DNRC’s website at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8337.

**SUPPLEMENTARY INFORMATION:** With this notice, we are advising the public that we are providing the final SEIS and amended HCP for public review. We jointly

prepared the final SEIS for our compliance with the National Environmental Policy Act (NEPA) and DNRC's compliance with the Montana Environmental Policy Act.

## **Background**

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under section 3 of the ESA, the term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (16 U.S.C. 1532(19)). The term "harm" is defined in title 50 of the Code of Federal Regulations as "an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR 17.3). The term "harass" is defined in the regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the incidental take of endangered and threatened species. Regulations governing activities involving endangered species are at 50 CFR part 17, subpart C, and regulations governing activities involving threatened species are at 50 CFR part 17, subpart D.

NEPA (42 U.S.C. 4321 et seq.) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine whether the actions may significantly affect the human environment. Under NEPA and its implementing regulations (40 CFR 1500 et seq.), Federal agencies must also compare effects of a reasonable range of alternatives to the proposed action. In these analyses, the Federal agency will identify potentially significant direct, indirect, and cumulative effects, as well as possible mitigation for any significant effects, on biological resources, land use, air quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives.

### **The Applicant's Project**

In 2011, we issued a permit to DNRC for take of the grizzly bear, Canada lynx, bull trout, westslope cutthroat trout, and Columbia redband trout incidental to forest management activities covered in their HCP (75 FR 57059). The grizzly bear, Canada lynx, and bull trout are listed as threatened under the ESA, while the westslope and Columbia redband trout are not listed species. The original permit covered approximately 548,500 acres of forested State trust lands in western Montana. The HCP addressed the process and contingencies for DNRC to transfer, exchange, or add lands for their forest management activities in the future. Thus, the Service had considered in the 2011 final EIS the potential effects of amending the HCP and permit to cover such actions, but was not able to analyze effects from adding specific lands that had not yet been identified. The final SEIS analyzes potential effects to the human and natural environment from the preferred alternative to amend the permit to cover take from

DNRC's forest management activities on an additional 81,416 acres. The permit's take authorization would increase for the grizzly bear, Canada lynx, bull trout, and westslope cutthroat trout. Change in authorized take of the Columbia redband trout is not necessary, because it does not occur on the additional lands. The amended permit would require DNRC to implement all applicable HCP conservation commitments on the additional lands to avoid, minimize, and mitigate the impacts of the take.

In April, 2013, Friends of the Wild Swan, Montana Environmental Information Center, and Natural Resources Defense Council challenged the issuance of the permit in a Federal District Court in Montana. The Court ruled in the Service's favor on all but one count. DNRC and the plaintiffs subsequently entered a settlement agreement for the remaining count in September 2015. The future addition of lands to the HCP and permit were not part of the complaint or the settlement agreement. The DNRC amended the HCP to incorporate the terms of the settlement agreement, which would not result in any changes to the permit.

### **National Environmental Policy Act Compliance**

Issuing an amended permit is a Federal action that requires compliance with NEPA. The amended permit would require the implementation of DNRC's amendments to the HCP. Therefore, the final SEIS analyzes the direct, indirect, and cumulative effects of issuing an amended permit and implementing the required measures in the amended HCP to avoid, minimize, and mitigate the impacts of the take. We also analyzed the effects of a no-action alternative. The no-action alternative includes amending the HCP to incorporate the terms of the settlement agreement, which is legally required, but does not include adding lands or issuing an amended permit authorizing

additional take. The final SEIS also includes all comments we received on the draft SEIS and our response to those comments.

In accordance with NEPA (40 CFR 1502.14(e)), we identified the proposed action as our preferred alternative in the final SEIS. The action agency's preferred alternative is a preliminary indication of its preference of action, chosen from among the alternatives analyzed. It is the alternative that the agency believes would fulfill its statutory mission and responsibilities, giving consideration to environmental, economic, technical, and other factors (43 CFR 46.420(d)). The preferred alternative is not a final agency decision; the final agency decision will be presented in the ROD after the 30-day review period for the final SEIS.

### **Public Review**

Copies of the Final SEIS and Amended HCP are available for review (see **ADDRESSES**). Any comment we receive will become part of the administrative record and may be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosure in their entirety.

In addition to our publication of this notice, the U.S. Environmental Protection Agency (EPA) will publish a Federal Register notice. The EPA is charged, under section

309 of the Clean Air Act, to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs. EPA also serves as the repository for EISs prepared by Federal agencies and provides notice of their availability in the *Federal Register*. The Environmental Impact Statement (EIS) Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the *Federal Register*. The notice of availability is the start of the 30-day "wait period" for final EISs, during which agencies are generally required to wait 30 days before making a decision on a proposed action. For more information, see <https://www.epa.gov/nepa>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

**Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and its implementing regulations for incidental take permits (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: May 16, 2018.

**Marjorie Nelson,**

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*Mountain-Prairie Region,*

*U.S. Fish and Wildlife Service,*

*Lakewood, Colorado.*

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